"was entitled to no consideration against the surety, unless by the terms of the contract the surety was to be bound thereby." Yet the present court somewhat arbitrarily declared that case inapplicable to the facts in this, and rested its decision on *Bank of New London* v. *Ketchum et al.*, 66 Wis 428, 29 N. W. Rep. 216. The latter case is exactly in point, but was decided, as was this, with more regard to the inconvenience of re-litigation than to the law and equity that every man is entitled to his day in court.

TAXATION—OFFICERS' FEES—UNIFORMITY.—Relator, a duly authorized administrator of a partnership estate, presented an inventory and appraisement of said estate to defendant, the county clerk, for filing. Defendant demanded two hundred and twenty-five dollars, as probate fees, under a statute requiring the payment of fees to the clerk in probate proceedings proportional in amount to the property owned by the estate, and refused to file any papers for the administration of the estate until such sum be paid. The state constitution provides for a uniform and equal rate of assessment and taxation of property. This action was brought by relator to secure a writ of mandamus directing the clerk to receive and file the papers in the probate proceedings. *Held,* that the writ should be granted, on the ground that the fees amounted to a property tax, and that the statute authorizing them violated the constitutional provisions with respect to the uniformity of property taxation. *State ex rel. Nettleton* v. *Case* (1905), — Wash. —, 81 Pac. Rep. 554.

If a charge, though in the statute authorizing it designated as a "fee", is in fact based entirely upon a property valuation and not upon actual and necessary services rendered or to be rendered, it is a property tax, rather than a fee for services. *State ex rel. Davidson* v. *Gorman,* 40 Minn. 232, 41 N. W. 948; *State ex rel. Sanderson* v. *Mann,* 76 Wis. 469, 45 N. W. 526; *Fatjo* v. *Pfister,* 117 Cal. 83, 48 Pac. 1012. A law providing for the collection of a "fee", which has for its direct and only purpose the creation of a fund by an exaction on property to be paid into the state treasury to be used indiscriminately for any and all public purposes, creates a tax. *Pittsburg, C. & St. L. Ry. Co.* v. *State,* 49 Ohio State 189, 30 N. W. 435, directly in point; and by way of inference *In re Wau Yin,* 22 Fed. Rep. 701, where a charge as a "license fee" was held to be a tax because the charge was much greater than the service rendered would warrant.

TELEGRAM—INTERSTATE COMMERCE—PENALTY BY STATE STATUTE FOR NON-DELIVERY.—A telegram was received at one point in Virginia to be delivered at another in the same state, but in transmission was lost in West Virginia. In this action for the penalty inflicted by state statute for non-delivery, *Held,* that the transmission was not interstate commerce and that the company was liable. *Western Union Telegraph Co.* v. *Hughes* (1905), — Va. —, 51 S. E. Rep. 225.

Two judges dissented. They were of opinion that a Virginia statute could not penalize the defendant for a default that occurred in West Virginia. But the company owed the plaintiff the duty of delivering the telegram at the prescribed destination, which was in Virginia, and so default occurred